

## DEPARTMENT OF THE ARMY PERMIT

**Permittee:** Florida Department of Transportation - District One

**Permit No:** SAJ-2007-5300 (IP-JPF)

**Issuing Office:** U.S. Army Engineer District, Jacksonville

NOTE: The term "you" and its derivatives, as used in this permit, mean the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the U.S. Army Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

**Project Description:** The applicant proposes to permanently impact approximately 5.586 acres of surface waters to construct two additional travel lanes along an approximately 2-mile section of S.R. 80, with attendant stormwater management facilities. The impacts include 0.016 acre of impact to the open water canal, and 5.57 acres of impact to the pepper-infested roadside ditch. The applicant states that the project design reflects all practicable measures for avoidance and minimization of impacts, including for the siting of the stormwater management system. The applicant states that due to poor quality of the wetland habitat proposed to be impacted, no mitigation for the impacts is necessary. Any additional wetland functions lost will be replaced by the proposed stormwater facilities. The project is referenced by FDOT as FPID Number 194201-2-32-01.

### **Geographic Position (Center Point of Project):**

Latitude        26.762609  
Longitude      -81.408313

**Project Location:** The project site involves proposed impacts to the City Ditch Road canal and unnamed waters of the United States located along State Road 80 east of Labelle, from west of Clark Street east to Birchwood Parkway, in Sections 2, 3, 4, 9, 10, and 11, Township 43 South, Range 29 East, in Hendry County, Florida. The project is within the Caloosahatchee River watershed.

### **Permit Conditions:**

#### **General Conditions:**

1. The time limit for completing the work authorized ends on April 24, 2013. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this

requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.

3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature and mailing address of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

#### **Special Conditions:**

1. **Reporting Address:** All reports, documentation and correspondence required by the conditions of this permit shall be submitted to the following address: **U.S. Army Corps of Engineers, Regulatory Division, Enforcement Section, P.O. Box 4970, Jacksonville, FL 32232**. The Permittee shall reference this permit number, SAJ-2007-4508 (IP - JPF), on all submittals.

2. **Commencement Notification:** Within 10 days from the date of initiating the authorized work, the Permittee shall provide to the Corps a written notification of the date of commencement of work authorized by this permit.

3. **As-Builts:** Within 60 days of completion of the authorized work or at the expiration of the construction window of this permit, whichever occurs first, the Permittee shall submit as-built drawings of the authorized work and a completed As-Built Certification Form to the Corps. The drawings shall be signed and sealed by a registered professional engineer and include the following:

a. A plan view drawing of the location of the authorized work footprint (as shown on the permit drawings) with an overlay of the work as constructed in the same scale as the attached permit drawings (8½-inch by 11-inch). The drawing should show all "earth disturbance," including wetland impacts, water management structures, and any on-site mitigation areas.

b. List any deviations between the work authorized by this permit and the work as constructed. In the event that the completed work deviates, in any manner, from the authorized work, describe on the As-Built Certification Form the deviations between the work authorized by this permit and the work as constructed. Clearly indicate on the as-built drawings any deviations that have been listed. Please note that the depiction and/or description of any deviations on the drawings and/or As-Built Certification Form does not constitute approval of any deviations by the U.S. Army Corps of Engineers.

c. The Department of the Army Permit number.

d. Include pre- and post-construction aerial photographs of the project site, if available.

**4. Erosion Control:** Prior to the initiation of any work authorized by this permit, the Permittee shall install erosion control measures along the perimeter of all work areas to prevent the displacement of fill material. Immediately after completion of the final grading of the land surface, all slopes, land surfaces, and filled areas adjacent to wetlands shall be stabilized using sod, degradable mats, or a combination of similar stabilizing materials to prevent erosion. The erosion control measures shall remain in place and be maintained until all authorized work has been completed and the site has been stabilized.

**5. Eastern Indigo Snakes:** The permittee agrees to implement the attached 'Standard Protection Measures for the Eastern Indigo Snake' (as revised July 27, 1999) to minimize the potential for impacts to the eastern indigo snake.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

( ) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

(X) Section 404 of the Clean Water Act (33 U.S.C. 1344).

( ) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, State, and local authorization required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal projects.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision: This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions: General Condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

John R. Willet      04/29/08  
(PERMITTEE)      (DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

PLG      29-Apr-2008  
(DISTRICT ENGINEER)      (DATE)  
Paul L. Grosskruger  
Colonel, U.S. Army

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

\_\_\_\_\_  
(TRANSFEREE - SIGNATURE)      (DATE)

\_\_\_\_\_  
(NAME-PRINTED)

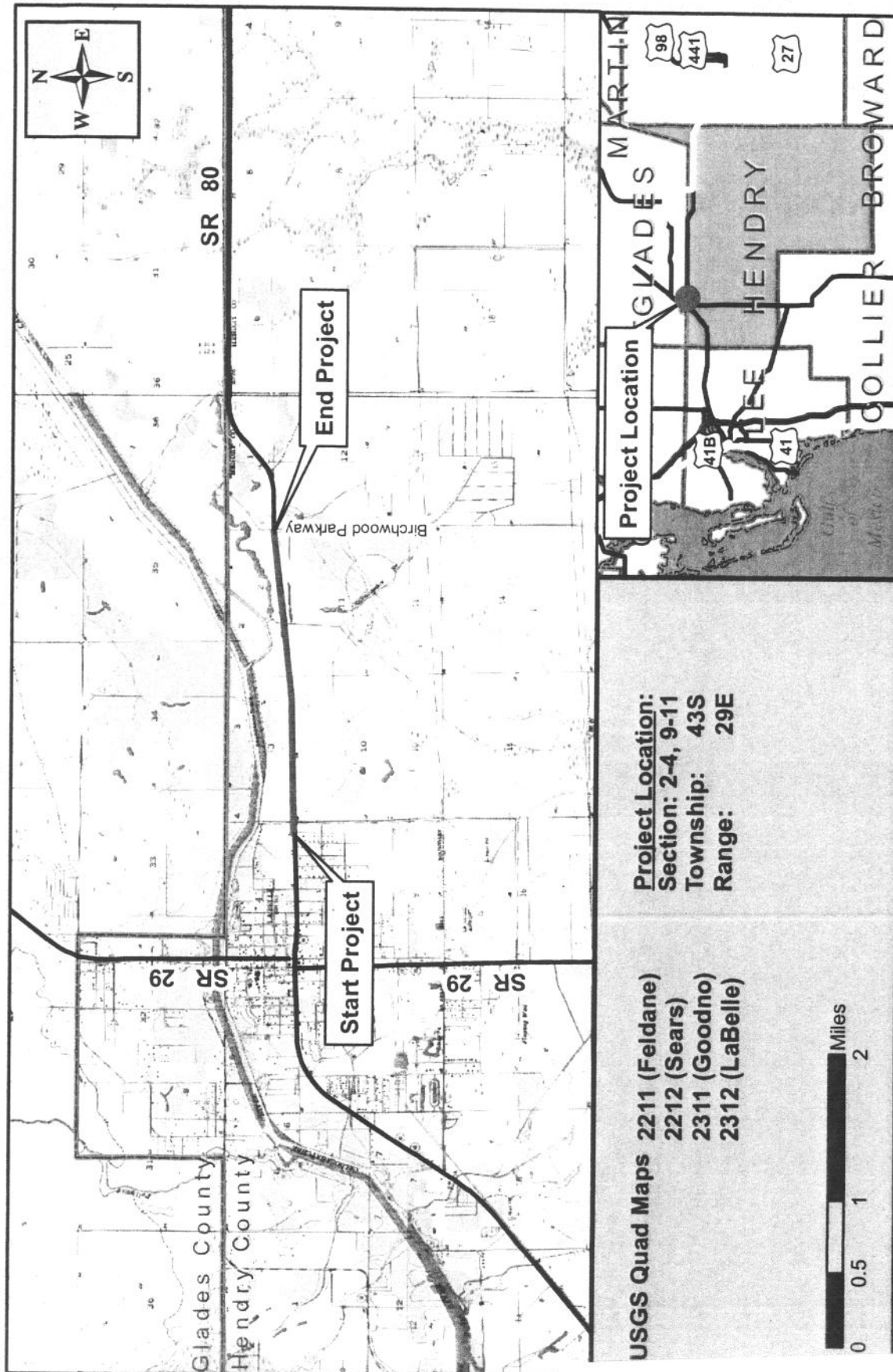
\_\_\_\_\_  
(ADDRESS)

\_\_\_\_\_  
(CITY, STATE, AND ZIP CODE)

## STANDARD PROTECTION MEASURES FOR THE EASTERN INDIGO SNAKE

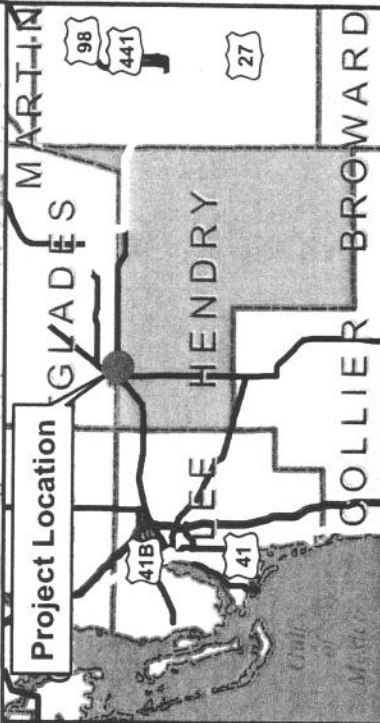
1. An eastern indigo snake protection/education plan shall be developed by the applicant or requestor for all construction personnel to follow. The plan shall be provided to the Service for review and approval at least 30 days prior to any clearing activities. The educational materials for the plan may consist of a combination of posters, videos, pamphlets, and lectures (e.g., an observer trained to identify eastern indigo snakes could use the protection/education plan to instruct construction personnel before any clearing activities occur). Informational signs should be posted throughout the construction site and contain the following information:
  - a. a description of the eastern indigo snake, its habits, and protection under Federal Law;
  - b. instructions not to injure, harm, harass or kill this species;
  - c. directions to cease clearing activities and allow the eastern indigo snake sufficient time to move away from the site on its own before resuming clearing; and,
  - d. telephone numbers of pertinent agencies to be contacted if a dead eastern indigo snake is encountered. The dead specimen should be thoroughly soaked in water, then frozen.
2. Only an individual who has been either authorized by a section 10(a)(1)(A) permit issued by the Service, or designated as an agent of the State of Florida by the Florida Fish and Wildlife Conservation Commission for such activities, is permitted to come in contact with or relocate an eastern indigo snake.
3. If necessary, eastern indigo snakes shall be held in captivity only long enough to transport them to a release site; at no time shall two snakes be kept in the same container during transportation.
4. An eastern indigo snake monitoring report must be submitted to the appropriate Florida Field Office within 60 days of the conclusion of clearing phases. The report should be submitted whether or not eastern indigo snakes are observed. The report should contain the following information:
  - a. any sightings of eastern indigo snakes;
  - b. summaries of any relocated snakes if relocation was approved for the project (e.g., locations of where and when they were found and relocated);
  - c. other obligations required by the Florida Fish and Wildlife Conservation Commission, as stipulated in the permit.





**Project Location:**  
**Section: 2-4, 9-11**  
**Township: 43S**  
**Range: 29E**

**USGS Quad Maps** 2211 (Feldane)  
 2212 (Sears)  
 2311 (Goodno)  
 2312 (LaBelle)



**Location Map**  
**S.R. 80 Widening**  
 West of Clark Street to Birchwood Parkway  
 FPID# 194201-2-32-01  
 Hendry and Glades County,

	1:63,360 1 inch equals 1 miles Created in ArcGIS 9.2	<b>Figure 1</b>
	District One Florida	

BEGIN PROJECT

CL CONST. S.R. 80  
STA. 12+00.00

2000'

N

CLARK STREET

FORD ROAD

OSW-1

RIGHT OF WAY LINE

COLLINGSWOOD PARKWAY

CL CONST. S.R. 80

OSW-2

RIGHT OF WAY LINE

S.R. 80

BIRCHWOOD PARKWAY

END PROJECT

CL CONST. S.R. 80  
STA. 126+84.00

PROJECT: S.R. 80

SECTIONS 9, 10, 11, 12, TOWNSHIP 43 SOUTH, RANGE 29 EAST

WATER BODY: CALOOSAHATCHEE RIVER

COUNTY OF HENDRY

PURPOSE: LOCATION MAP - SHEET INDEX

STATE OF FLORIDA

DATUM: NGVD '29



**DRMP**  
ENGINEERS - SURVEYORS - PLANNERS - SCIENTISTS  
DYER, RIDDLE, WILLS & PRECOURT, INC.

STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION  
DISTRICT ONE

*[Signature]*  
Signed

DATE

9/12/07

REG. FLA. ENG. NO. 43532

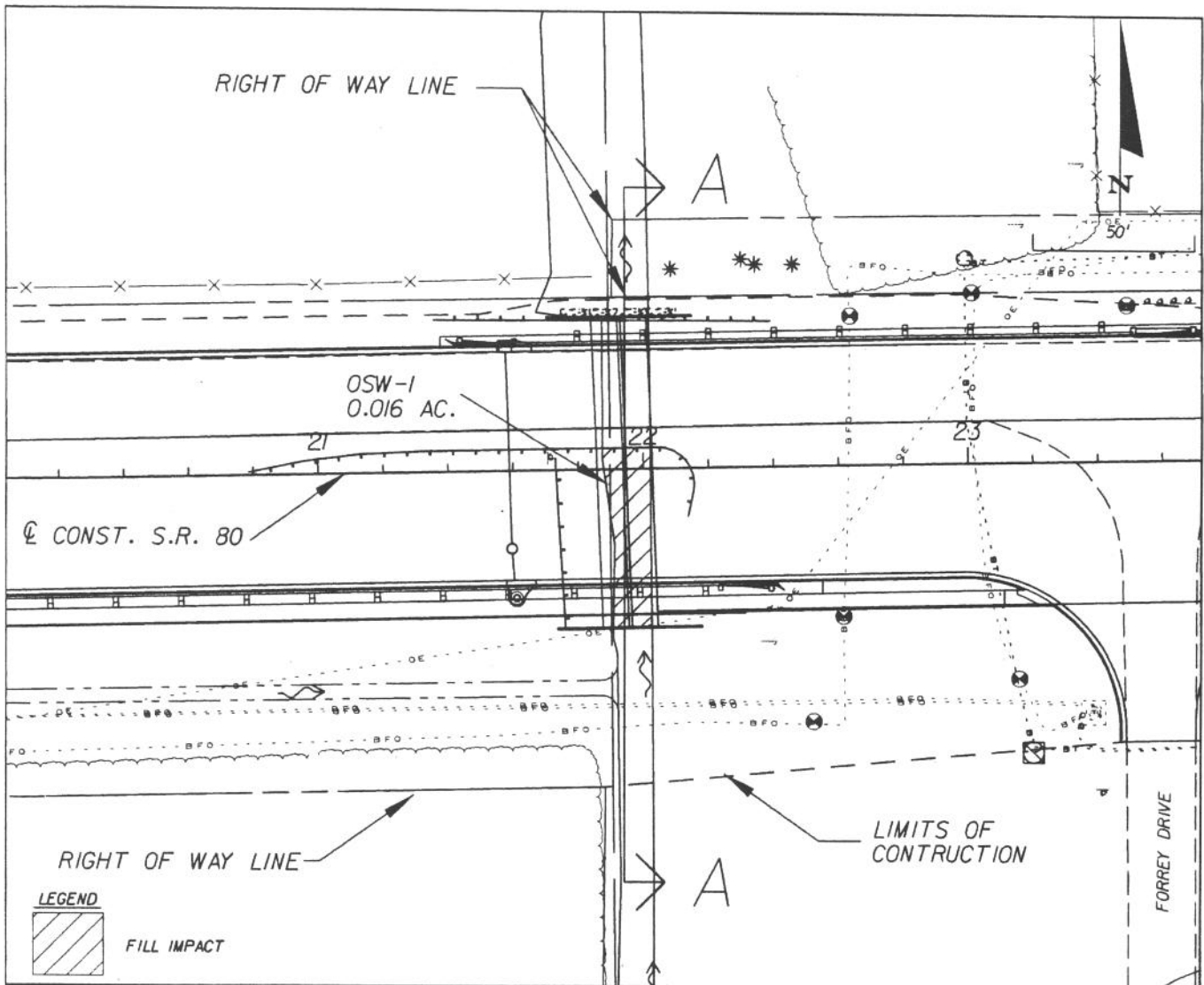
SAJ-2007-5300 (IP-JPF)

FL DOT District 1

Sheet 2 of 6

April 23, 2008

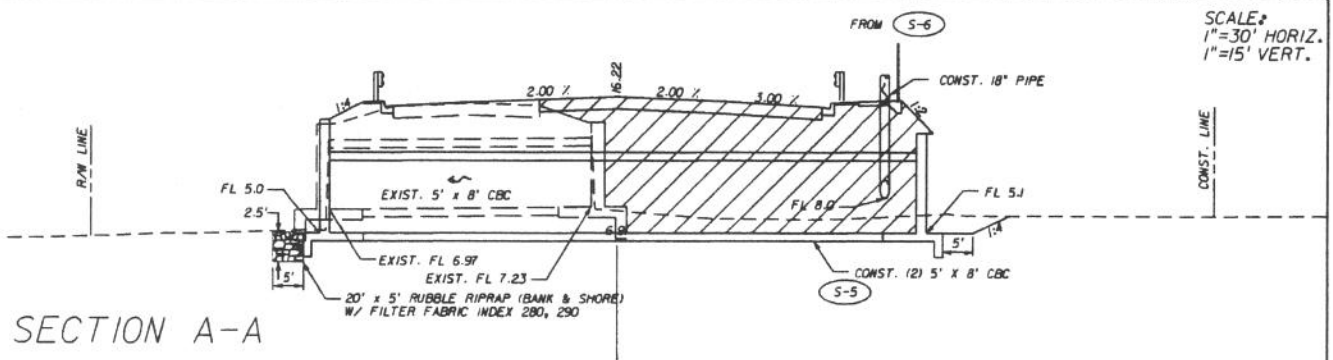




**LEGEND**



FILL IMPACT



SCALE:  
1"=30' HORIZ.  
1"=15' VERT.

PROJECT: SR 80  
WATER BODY: UN-NAMED ROADSIDE SWALES  
PURPOSE: OTHER SURFACE WATER IMPACT  
DATUM: NGVD '29

SECTIONS 9, 10, 11, 12, TOWNSHIP 43 SOUTH, RANGE 29 EAST  
COUNTY OF HENDRY  
STATE OF FLORIDA  
SHEET 3 OF 6

SAJ-2007-5300 (IP-JPF)  
FL DOT District 1  
Sheet 3 of 6  
April 23, 2008



STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION  
DISTRICT ONE

DATE: 9/12/07  
REG. F.L.A. E.M.G. NO. 43537

MATCH LINE 81+00



RIGHT OF WAY LINE

OSW-2  
5.57 AC.

CL CONST. S.R. 80

RIGHT OF WAY LINE

**LEGEND**



FILL IMPACT

PROJECT: SR 80

SECTIONS 9, 10, 11, 12, TOWNSHIP 43 SOUTH, RANGE 29 EAST

WATER BODY: UN-NAMED ROADSIDE SWALES

COUNTY OF HENDRY

PURPOSE: OTHER SURFACE WATER IMPACT

STATE OF FLORIDA

DATUM: NDVD '29

SHEET 4 OF 6

SAJ-2007-5300 (IP-JPF)

FL DOT District 1

Sheet 4 of 6

April 23, 2008



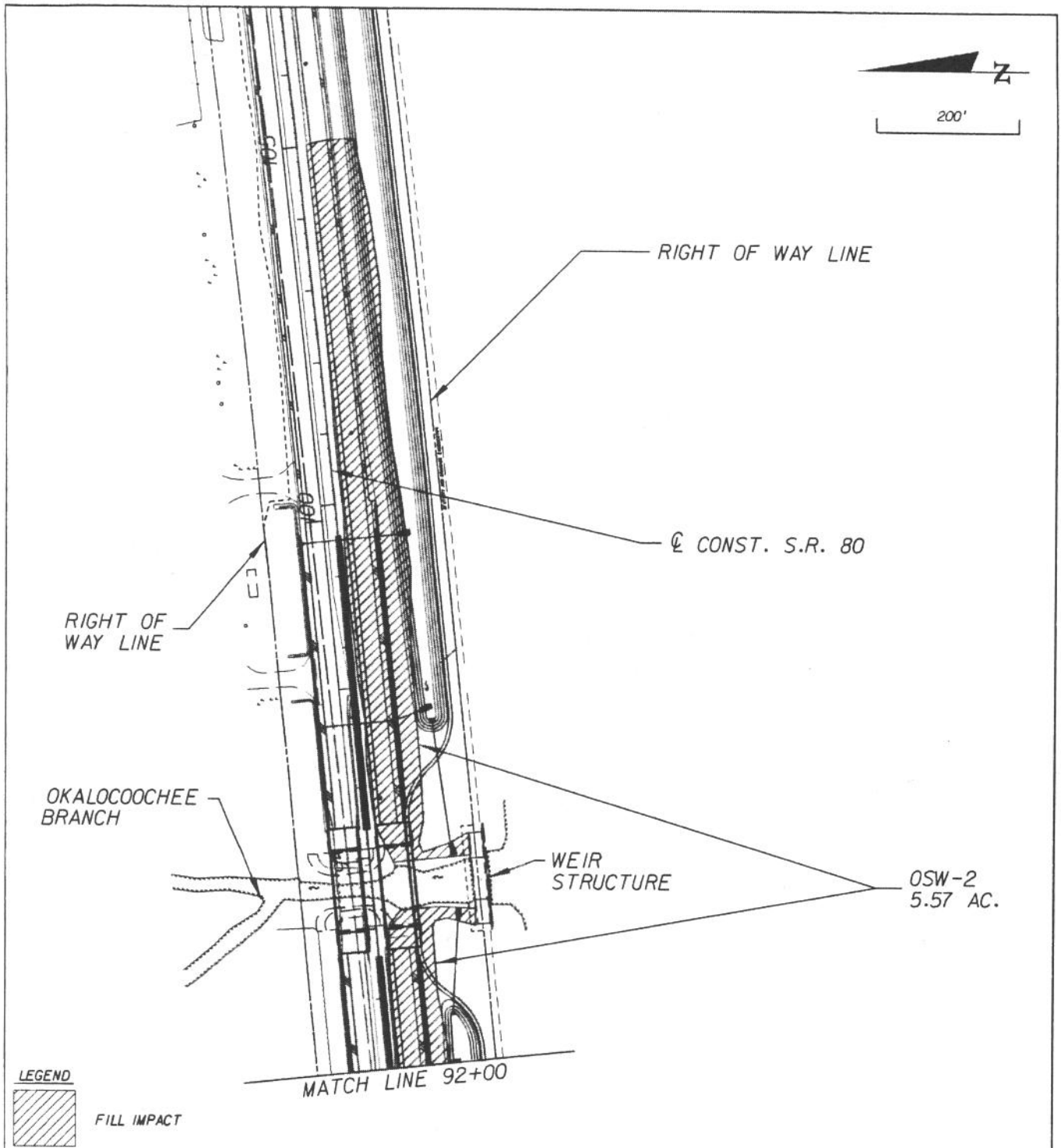
**DRMP**  
ENGINEERS • SURVEYORS • PLANNERS • SCIENTISTS

DYER, RIDDLE, MILLS & PRECOURT, INC.  
1505 E. COLONIAL DRIVE  
ORLANDO, FLORIDA 32803  
(407) 896-0594

STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION  
DISTRICT ONE

DATE 9/12/07  
SIGNED 43532  
REC. FLA. ENG. NO. 43532





PROJECT: SR 80

SECTIONS 9, 10, 11, 12, TOWNSHIP 43 SOUTH, RANGE 29 EAST

WATER BODY: UN-NAMED ROADSIDE SWALES

COUNTY OF HENDRY

PURPOSE: OTHER SURFACE WATER IMPACT

STATE OF FLORIDA

DATUM: NGVD '29

SHEET 6 OF 6



STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION  
DISTRICT ONE

SAJ-2007-5300 (IP-JPF)  
FL DOT District 1  
Sheet 6 of 6  
April 23, 2008

DATE 4/12/07  
REG. FLA. ENG. NO. 43530



**SOUTH FLORIDA WATER MANAGEMENT DISTRICT  
ENVIRONMENTAL RESOURCE  
STANDARD GENERAL PERMIT NO. 26-00597-P  
DATE ISSUED: January 18, 2008**

Form #0941  
08/95

**PERMITTEE:** FLORIDA DEPARTMENT OF TRANSPORTATION  
DISTRICT ONE  
801 N BROADWAY AVE  
BARTOW, FL 33831

**PROJECT DESCRIPTION:** This application is a request for a modification of an Environmental Resource Permit authorizing construction and operation of a surface water management system serving 60.90 acres of a roadway project known as State Road 80 west of Davis Street to Birchwood Parkway with discharge into The Caloosahatchee River via roadside swales and the Okaloacoochee Branch.

**PROJECT LOCATION:** HENDRY COUNTY, SEC 2,3,4,9,10,11 TWP 43S RGE 29E

**PERMIT DURATION:** See Special Condition No:1. See attached Rule 40E-4.321, Florida Administrative Code.

This is to notify you of the District's agency action concerning Notice of Intent for Permit Application No. 070913-19, dated September 13, 2007. This action is taken pursuant to Rule 40E-1.603 and Chapter 40E-40, Florida Administrative Code (F.A.C.).

Based on the information provided, District rules have been adhered to and an Environmental Resource General Permit is in effect for this project subject to:

1. Not receiving a filed request for a Chapter 120, Florida Statutes, administrative hearing.
2. the attached 19 General Conditions (See Pages : 2 - 4 of 6),
3. the attached 13 Special Conditions (See Pages : 5 - 6 of 6) and
4. the attached 3 Exhibit(s)

Should you object to these conditions, please refer to the attached "Notice of Rights" which addresses the procedures to be followed if you desire a public hearing or other review of the proposed agency action. Please contact this office if you have any questions concerning this matter. If we do not hear from you in accordance with the "Notice of Rights," we will assume that you concur with the District's action.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a "Notice of Rights" has been mailed to the Permittee (and the persons listed in the attached distribution list) no later than 5:00 p.m. on this 18th day of January, 2008, in accordance with Section 120.60(3), Florida Statutes.

BY: \_\_\_\_\_  
Ricardo A. Valera, P.E.  
Director, LWC Regulatory Division  
Lower West Coast Service Center

Certified mail number 7006 0810 0003 3837 6701



## NOTICE OF RIGHTS

As required by Sections 120.569(1), and 120.60(3), Fla. Stat., following is notice of the opportunities which may be available for administrative hearing or judicial review when the substantial interests of a party are determined by an agency. Please note that this Notice of Rights is not intended to provide legal advice. Not all the legal proceedings detailed below may be an applicable or appropriate remedy. You may wish to consult an attorney regarding your legal rights.

### **RIGHT TO REQUEST ADMINISTRATIVE HEARING**

A person whose substantial interests are or may be affected by the South Florida Water Management District's (SFWMD or District) action has the right to request an administrative hearing on that action pursuant to Sections 120.569 and 120.57, Fla. Stat. Persons seeking a hearing on a District decision which does or may determine their substantial interests shall file a petition for hearing with the District Clerk within 21 days of receipt of written notice of the decision, unless one of the following shorter time periods apply: 1) within 14 days of the notice of consolidated intent to grant or deny concurrently reviewed applications for environmental resource permits and use of sovereign submerged lands pursuant to Section 373.427, Fla. Stat.; or 2) within 14 days of service of an Administrative Order pursuant to Subsection 373.119(1), Fla. Stat. "Receipt of written notice of agency decision" means receipt of either written notice through mail, or electronic mail, or posting that the District has or intends to take final agency action, or publication of notice that the District has or intends to take final agency action. Any person who receives written notice of a SFWMD decision and fails to file a written request for hearing within the timeframe described above waives the right to request a hearing on that decision.

### **Filing Instructions**

The Petition must be filed with the Office of the District Clerk of the SFWMD. Filings with the District Clerk may be made by mail, hand-delivery or facsimile. **Filings by e-mail will not be accepted.** Any person wishing to receive a clerked copy with the date and time stamped must provide an additional copy. A petition for administrative hearing is deemed filed upon receipt during normal business hours by the District Clerk at SFWMD headquarters in West Palm Beach, Florida. Any document received by the office of the SFWMD Clerk after 5:00 p.m. shall be filed as of 8:00 a.m. on the next regular business day. Additional filing instructions are as follows:

- Filings by mail must be addressed to the Office of the SFWMD Clerk, P.O. Box 24680, West Palm Beach, Florida 33416.
- Filings by hand-delivery must be delivered to the Office of the SFWMD Clerk. **Delivery of a petition to the SFWMD's security desk does not constitute filing. To ensure proper filing, it will be necessary to request the SFWMD's security officer to contact the Clerk's office.** An employee of the SFWMD's Clerk's office will receive and file the petition.
- Filings by facsimile must be transmitted to the SFWMD Clerk's Office at (561) 682-6010. Pursuant to Subsections 28-106.104(7), (8) and (9), Fla. Admin. Code, a party who files a document by facsimile represents that the original physically signed document will be retained by that party for the duration of that proceeding and of any subsequent appeal or subsequent proceeding in that cause. Any party who elects to file any document by facsimile shall be responsible for any delay, disruption, or interruption of the electronic signals and accepts the full risk that the document may not be properly filed with the clerk as a result. The filing date for a document filed by facsimile shall be the date the SFWMD Clerk receives the complete document.

### **Initiation of an Administrative Hearing**

Pursuant to Rules 28-106.201 and 28-106.301, Fla. Admin. Code, initiation of an administrative hearing shall be made by written petition to the SFWMD in legible form and on 8 and 1/2 by 11 inch white paper. All petitions shall contain:

1. Identification of the action being contested, including the permit number, application number, District file number or any other SFWMD identification number, if known.
2. The name, address and telephone number of the petitioner and petitioner's representative, if any.
3. An explanation of how the petitioner's substantial interests will be affected by the agency determination.
4. A statement of when and how the petitioner received notice of the SFWMD's decision.
5. A statement of all disputed issues of material fact. If there are none, the petition must so indicate.
6. A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the SFWMD's proposed action.
7. A statement of the specific rules or statutes the petitioner contends require reversal or modification of the SFWMD's proposed action.
8. If disputed issues of material fact exist, the statement must also include an explanation of how the alleged facts relate to the specific rules or statutes.
9. A statement of the relief sought by the petitioner, stating precisely the action the petitioner wishes the SFWMD to take with respect to the SFWMD's proposed action.

A person may file a request for an extension of time for filing a petition. The SFWMD may, for good cause, grant the request. Requests for extension of time must be filed with the SFWMD prior to the deadline for filing a petition for hearing. Such requests for extension shall contain a certificate that the moving party has consulted with all other parties concerning the extension and that the SFWMD and any other parties agree to or oppose the extension. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

If the District's Governing Board takes action with substantially different impacts on water resources from the notice of intended agency decision, the persons who may be substantially affected shall have an additional point of entry pursuant to Rule 28-106.111, Fla. Admin. Code, unless otherwise provided by law.

### **Mediation**

The procedures for pursuing mediation are set forth in Section 120.573, Fla. Stat., and Rules 28-106.111 and 28-106.401-.405, Fla. Admin. Code. The SFWMD is not proposing mediation for this agency action under Section 120.573, Fla. Stat., at this time.

### **RIGHT TO SEEK JUDICIAL REVIEW**

Pursuant to Sections 120.60(3) and 120.68, Fla. Stat., a party who is adversely affected by final SFWMD action may seek judicial review of the SFWMD's final decision by filing a notice of appeal pursuant to Florida Rule of Appellate Procedure 9.110 in the Fourth District Court of Appeal or in the appellate district where a party resides and filing a second copy of the notice with the SFWMD Clerk within 30 days of rendering of the final SFWMD action.

### GENERAL CONDITIONS

1. All activities authorized by this permit shall be implemented as set forth in the plans, specifications and performance criteria as approved by this permit. Any deviation from the permitted activity and the conditions for undertaking that activity shall constitute a violation of this permit and Part IV, Chapter 373, F.S.
2. This permit or a copy thereof, complete with all conditions, attachments, exhibits, and modifications shall be kept at the work site of the permitted activity. The complete permit shall be available for review at the work site upon request by District staff. The permittee shall require the contractor to review the complete permit prior to commencement of the activity authorized by this permit.
3. Activities approved by this permit shall be conducted in a manner which does not cause violations of State water quality standards. The permittee shall implement best management practices for erosion and pollution control to prevent violation of State water quality standards. Temporary erosion control shall be implemented prior to and during construction, and permanent control measures shall be completed within 7 days of any construction activity. Turbidity barriers shall be installed and maintained at all locations where the possibility of transferring suspended solids into the receiving waterbody exists due to the permitted work. Turbidity barriers shall remain in place at all locations until construction is completed and soils are stabilized and vegetation has been established. All practices shall be in accordance with the guidelines and specifications described in Chapter 6 of the Florida Land Development Manual; A Guide to Sound Land and Water Management (Department of Environmental Regulation, 1988), incorporated by reference in Rule 40E-4.091, F.A.C. unless a project-specific erosion and sediment control plan is approved as part of the permit. Thereafter the permittee shall be responsible for the removal of the barriers. The permittee shall correct any erosion or shoaling that causes adverse impacts to the water resources.
4. The permittee shall notify the District of the anticipated construction start date within 30 days of the date that this permit is issued. At least 48 hours prior to commencement of activity authorized by this permit, the permittee shall submit to the District an Environmental Resource Permit Construction Commencement Notice Form Number 0960 indicating the actual start date and the expected construction completion date.
5. When the duration of construction will exceed one year, the permittee shall submit construction status reports to the District on an annual basis utilizing an annual status report form. Status report forms shall be submitted the following June of each year.
6. Within 30 days after completion of construction of the permitted activity, the permittee shall submit a written statement of completion and certification by a professional engineer or other individual authorized by law, utilizing the supplied Environmental Resource/Surface Water Management Permit Construction Completion/Certification Form Number 0881A, or Environmental Resource/Surface Water Management Permit Construction Completion Certification - For Projects Permitted prior to October 3, 1995 Form No. 0881B, incorporated by reference in Rule 40E-1.659, F.A.C. The statement of completion and certification shall be based on onsite observation of construction or review of as-built drawings for the purpose of determining if the work was completed in compliance with permitted plans and specifications. This submittal shall serve to notify the District that the system is ready for inspection. Additionally, if deviation from the approved drawings are discovered during the certification process, the certification must be accompanied by a copy of the approved permit drawings with deviations noted. Both the original and revised specifications must be clearly shown. The plans must be clearly labeled as "as-built" or "record" drawings. All surveyed dimensions and elevations shall be certified by a registered surveyor.
7. The operation phase of this permit shall not become effective: until the permittee has complied with the requirements of condition (6) above, and submitted a request for conversion of Environmental Resource Permit from Construction Phase to Operation Phase, Form No. 0920; the District determines the system to be in compliance with the permitted plans and specifications; and the entity approved by the District in accordance with Sections 9.0 and 10.0 of the Basis of Review for Environmental Resource Permit

## GENERAL CONDITIONS

Applications within the South Florida Water Management District, accepts responsibility for operation and maintenance of the system. The permit shall not be transferred to such approved operation and maintenance entity until the operation phase of the permit becomes effective. Following inspection and approval of the permitted system by the District, the permittee shall initiate transfer of the permit to the approved responsible operating entity if different from the permittee. Until the permit is transferred pursuant to Section 40E-1.6107, F.A.C., the permittee shall be liable for compliance with the terms of the permit.

8. Each phase or independent portion of the permitted system must be completed in accordance with the permitted plans and permit conditions prior to the initiation of the permitted use of site infrastructure located within the area served by that portion or phase of the system. Each phase or independent portion of the system must be completed in accordance with the permitted plans and permit conditions prior to transfer of responsibility for operation and maintenance of the phase or portion of the system to a local government or other responsible entity.
9. For those systems that will be operated or maintained by an entity that will require an easement or deed restriction in order to enable that entity to operate or maintain the system in conformance with this permit, such easement or deed restriction must be recorded in the public records and submitted to the District along with any other final operation and maintenance documents required by Sections 9.0 and 10.0 of the Basis of Review for Environmental Resource Permit applications within the South Florida Water Management District, prior to lot or units sales or prior to the completion of the system, whichever comes first. Other documents concerning the establishment and authority of the operating entity must be filed with the Secretary of State, county or municipal entities. Final operation and maintenance documents must be received by the District when maintenance and operation of the system is accepted by the local government entity. Failure to submit the appropriate final documents will result in the permittee remaining liable for carrying out maintenance and operation of the permitted system and any other permit conditions.
10. Should any other regulatory agency require changes to the permitted system, the permittee shall notify the District in writing of the changes prior to implementation so that a determination can be made whether a permit modification is required.
11. This permit does not eliminate the necessity to obtain any required federal, state, local and special district authorizations prior to the start of any activity approved by this permit. This permit does not convey to the permittee or create in the permittee any property right, or any interest in real property, nor does it authorize any entrance upon or activities on property which is not owned or controlled by the permittee, or convey any rights or privileges other than those specified in the permit and Chapter 40E-4 or Chapter 40E-40, F.A.C..
12. The permittee is hereby advised that Section 253.77, F.S. states that a person may not commence any excavation, construction, or other activity involving the use of sovereign or other lands of the State, the title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund without obtaining the required lease, license, easement, or other form of consent authorizing the proposed use. Therefore, the permittee is responsible for obtaining any necessary authorizations from the Board of Trustees prior to commencing activity on sovereignty lands or other state-owned lands.
13. The permittee must obtain a Water Use permit prior to construction dewatering, unless the work qualifies for a general permit pursuant to Subsection 40E-20.302(3), F.A.C., also known as the "No Notice" Rule.
14. The permittee shall hold and save the District harmless from any and all damages, claims, or liabilities which may arise by reason of the construction, alteration, operation, maintenance, removal, abandonment or use of any system authorized by the permit.
15. Any delineation of the extent of a wetland or other surface water submitted as part of the permit

### GENERAL CONDITIONS

application, including plans or other supporting documentation, shall not be considered binding, unless a specific condition of this permit or a formal determination under Section 373.421(2), F.S., provides otherwise.

16. The permittee shall notify the District in writing within 30 days of any sale, conveyance, or other transfer of ownership or control of a permitted system or the real property on which the permitted system is located. All transfers of ownership or transfers of a permit are subject to the requirements of Rules 40E-1.6105 and 40E-1.6107, F.A.C.. The permittee transferring the permit shall remain liable for corrective actions that may be required as a result of any violations prior to the sale, conveyance or other transfer of the system.
17. Upon reasonable notice to the permittee, District authorized staff with proper identification shall have permission to enter, inspect, sample and test the system to insure conformity with the plans and specifications approved by the permit.
18. If historical or archaeological artifacts are discovered at any time on the project site, the permittee shall immediately notify the appropriate District service center.
19. The permittee shall immediately notify the District in writing of any previously submitted information that is later discovered to be inaccurate.



### SPECIAL CONDITIONS

1. The construction phase of this permit shall expire on January 18, 2013.
2. Operation of the surface water management system shall be the responsibility of FLORIDA DEPARTMENT OF TRANSPORTATION.

3. Discharge Facilities:

Basin 2, Structure: OF-2

1-2' WIDE BROAD CRESTED weir with crest at elev. 12.3' NGVD 29.

1-3.28" dia. CIRCULAR ORIFICE with invert at elev. 11' NGVD 29.

Receiving body : Caloosahatchee River via roadside swales.

Control elev : 11 feet NGVD 29. /11 FEET NGVD 29 DRY SEASON.

Basin 3, Structure: OF-3

1-1' WIDE BROAD CRESTED weir with crest at elev. 10.5' NGVD 29.

1-3.36" dia. CIRCULAR ORIFICE with invert at elev. 9' NGVD 29.

Receiving body : Caloosahatchee River via the Okaloacoochee Branch.

Control elev : 9 feet NGVD 29. /9 FEET NGVD 29 DRY SEASON.

Basin 4, Structure: OF-4

1-4.3' WIDE BROAD CRESTED weir with crest at elev. 11.5' NGVD 29.

1-4.69" dia. CIRCULAR ORIFICE with invert at elev. 7' NGVD 29.

Receiving body : Caloosahatchee River via the Okaloacoochee Branch.

Control elev : 7 feet NGVD 29. /7 FEET NGVD 29 DRY SEASON.

4. The permittee shall be responsible for the correction of any erosion, shoaling or water quality problems that result from the construction or operation of the surface water management system.
5. Measures shall be taken during construction to insure that sedimentation and/or turbidity violations do not occur in the receiving water.
6. The District reserves the right to require that additional water quality treatment methods be incorporated into the drainage system if such measures are shown to be necessary.
7. Facilities other than those stated herein shall not be constructed without an approved modification of this permit.
8. A stable, permanent and accessible elevation reference shall be established on or within one hundred (100) feet of all permitted discharge structures no later than the submission of the certification report. The location of the elevation reference must be noted on or with the certification report.
9. The permittee shall provide routine maintenance of all of the components of the surface water management system in order to remove all trapped sediments/debris. All materials shall be properly disposed of as required by law. Failure to properly maintain the system may result in adverse flooding conditions.
10. This permit is issued based on the applicant's submitted information which reasonably demonstrates that adverse water resource related impacts will not be caused by the completed permit activity. Should any adverse impacts caused by the completed surface water management system occur, the District will require the permittee to provide appropriate mitigation to the District or other impacted party. The District will require the permittee to modify the surface water management system, if necessary, to eliminate the cause of the adverse impacts.
11. The permittee acknowledges, that pursuant to Rule 40E-4.101(2), F.A.C., a notice of Environmental

### **SPECIAL CONDITIONS**

Resource or Surface Water Management Permit may be recorded in the county public records. Pursuant to the specific language of the rule, this notice shall not be considered an encumbrance upon the property.

12. The exhibits and special conditions in this permit apply only to this application. They do not supersede or delete any requirements for other applications covered in Permit No. 26-00597-P unless otherwise specified herein.
13. Minimum road crown elevation: Basin 1 - 15.00 feet NGVD 29. Basin 2 - 16.00 feet NGVD 29.  
Basin 3 - 16.00 feet NGVD 29. Basin 4 - 15.00 feet NGVD 29.

**CESAJ-RD-ST SAJ-2005-5300 (IP-JPF)**  
**MEMORANDUM FOR RECORD**

**SUBJECT:** Department of the Army Environmental Assessment and the Statement of Findings for the Above-Numbered Permit Application

1. **APPLICANT:** Florida Department of Transportation District One  
801 North Broadway Avenue  
Bartow, FL 33830

2. **LOCATION, EXISTING SITE CONDITIONS, PROJECT DESCRIPTION, AND CHANGES TO PROJECT:**

**a. Location:** The project site involves proposed impacts to the City Ditch Road canal and unnamed waters of the United States located along State Road 80 east of Labelle, from west of Clark Street east to Birchwood Parkway, in Sections 2, 3, 4, 9, 10, and 11, Township 43 South, Range 29 East, in Hendry County, Florida. The project is within the Caloosahatchee River watershed.

Latitude 26.762609 North, Longitude -81.408313 West

**b. Existing Site Conditions:** The project area includes approximately 60.9 acres, with 5.81 acres of surface waters within the project boundaries, including the Okaloacoochee Branch tributary to the Caloosahatchee River, the City Ditch Road canal (which also is a tributary to the Caloosahatchee), and an unnamed roadside ditch that discharges into the Okaloacoochee Branch. The branch and canal are open water areas; the ditch is predominantly vegetated with Brazilian pepper.

**c. Project Description:** The applicant proposes to permanently impact approximately 5.586 acres of surface waters to construct two additional travel lanes along an approximately 2-mile section of S.R. 80, with attendant stormwater management facilities. The impacts include 0.016 acre of impact to the open water canal, and 5.57 acres of impact to the pepper-infested roadside ditch. The applicant states that the project design reflects all practicable measures for avoidance and minimization of impacts, including for the siting of the stormwater management system. The applicant states that due to poor quality of the wetland habitat proposed to be impacted, no mitigation for the impacts is necessary. Any additional wetland functions lost will be replaced by the proposed stormwater facilities. The project is referenced by FDOT as FPID Number 194201-2-32-01.

**d. Changes to Project:** The final project description is the same as the initial project description.

**3. PROJECT PURPOSE:**

- a. **Basic:** To widen a section of state road from two lanes to four lanes to provide improved transportation capacity.
- b. **Overall:** To widen an approximately 2-mile long segment of S.R. 80 in Hendry County from two lanes to four lanes, with attendant stormwater facilities, to meet a need for additional transportation capacity in that area and adjacent areas.

**4. Scope of Analysis:** The proposed project is a public action to widen an existing road in Hendry County, Florida. Federal control and responsibility over the project site is determined to exist under Section 404 of the Clean Water Act because of the proposed discharge of fill into jurisdictional wetlands. But for the fill material, the project could not be completed; therefore, the Corps of Engineers has determined the scope of analysis to be the entire project site.

**5. Statutory Authority:** Section 404 of the Clean Water Act (33 U.S.C. 1344).

**6. OTHER FEDERAL, STATE, AND LOCAL AUTHORIZATIONS OBTAINED OR REQUIRED AND PENDING:**

a. **State Water Quality Certification (WQC):** The South Florida Water Management District (SFWMD) issued an Environmental Resource Permit No. 26-00597-P on 18 January 2008. The SFWMD permit also constitutes compliance with water quality standards under Section 401 of the Clean Water Act, 33 U.S.C. 1341.

b. **Coastal Zone Management (CZM) consistency/permit:** There is no evidence or indication from the State of Florida that the project is inconsistent with the Florida CZM. Issuance of the FDEP permit indicates that the project complies with the CZM Act.

c. **Other Authorizations:** None known.

**7. DATE OF PUBLIC NOTICE AND SUMMARY OF COMMENTS:**

a. **Application History:** An application was received at the Tampa Regulatory Office on 13 September 2007 and was considered to be complete. A public notice was published on 02 October 2007 and was sent to all adjacent property owners including State and Federal agencies. All comments received on this application have been reviewed and are summarized below:

**(1) U.S. Environmental Protection Agency (EPA) Comments:** No comments were received from the EPA during the public notice comment period.

**(2) U.S. Fish and Wildlife Service (FWS) Comments:** In a letter dated 20 December 2007, the FWS stated that they concur with the Corps determination of "may affect, but is not likely to adversely affect" for the Audubon's crested caracara, Florida panther, eastern indigo snake (*Drymarchon corais couperi*) and wood stork (*Mycertia americana*).

**(3) National Marine Fisheries Service (NMFS) Comments:** In a letter dated 18 October 2007, the NMFS stated that it does not appear that the project would directly impact any NMFS trust resources, but recommended that the stormwater treatment systems address runoff from the proposed widened road, and that best management practices be employed during road construction, to protect downstream estuarine habitats.

**(4) State Historic Preservation Officer (SHPO) Comments:** No comments were received from the SHPO during the public notice comment period.

**(5) State and Local Agencies Comments:** Not applicable.

**(6) Organization Comments:** Not applicable.

**(7) Individual Comments:** Not applicable.

**b. Response to the comments:** No coordination of the comments was necessary. Previous discussions with the NMFS have indicated that their water quality concerns are addressed by the issuance of the state's Environmental Resource Permit.

**c. Additional Coordination with Agencies and the Applicant:** No other coordination was necessary.

## **8. ALTERNATIVES:**

**a. Avoidance (No action, uplands, availability of other sites):** The basic project purpose is to widen a road. Roads do not have to be located in a water of the United States to fulfill the basic purpose of the project. Therefore, the proposed project is not water dependent. Examples of water dependent projects include, but are not limited to, dams, marinas, mooring facilities, and docks.

The project would involve expanding an existing two-lane roadway into a four-lane roadway to meet a need for additional transportation capacity. Designing and constructing a new road elsewhere is not a viable option to the applicant. A new road would impact residential areas and potentially cost considerably more than widening an



existing roadway. The construction of a new road in this part of Hendry County would also result in greater impacts to wetlands than widening an existing road; therefore, there are no other sites that would be less environmentally damaging.

**b. Minimization (modified project designs, etc.):** The road would be widened to accommodate existing and projected traffic. To minimize impacts the design plans propose to utilize all of the existing paved areas and filled road shoulders. The plans were also designed to impact areas to the north, thus avoiding higher quality wetland areas. The Corps feels the applicant has minimized impacts to the maximum practicable extent.

**c. Project As Proposed (Outline impacts of project as proposed):** To construct the project, the applicant is requesting to permanently impact approximately 5.586 acres of surface waters.

**d. Compensatory Mitigation (wetland enhancement, creation, etc.):** The applicant states that due to poor quality of the wetland habitat proposed to be impacted, no mitigation for the impacts is necessary. Any additional wetland functions lost will be replaced by the proposed stormwater facilities. The Corps reviewed the available information and agrees that no compensatory mitigation for lost wetland function is necessary.

**9. Evaluation of the 404(b)(1) guidelines:** The Corps reviewed the proposed project in accordance with the 404 (b)(1) Guidelines. The review demonstrates that the Corps analyzed all of the alternatives and that the proposed alternative is the least environmentally damaging and practicable alternative considering expense, existing technology, and logistics. The project would not cause or contribute to violations of State Water quality standards, jeopardize the existence of any endangered species or affect a marine sanctuary. The Corps does not expect significant degradation and the applicant has taken all available practicable steps to minimize impacts.

**Findings:** The proposed site for the discharge of dredged or fill material complies with the Section 404(b)(1) guidelines with the inclusion of the following conditions:

- **Erosion Control:** Prior to the initiation of any work authorized by this permit, the Permittee shall install erosion control measures along the perimeter of all work areas to prevent the displacement of fill material. Immediately after completion of the final grading of the land surface, all slopes, land surfaces, and filled areas adjacent to wetlands shall be stabilized using sod, degradable mats, or a combination of similar stabilizing materials to prevent erosion. The erosion control measures shall remain in place and be maintained until all authorized work has been completed and the site has been stabilized.

## 10. PUBLIC INTEREST REVIEW:

**a. All public interest factors have been reviewed:** The Corps reviewed all of the public interest factors including, but not limited to, the effects the work might have on conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, land use, navigation, shore erosion and accretion, recreation, water quality, safety, and consideration of property ownership. The Corps has determined that the proposed work will not adversely affect any of the public interest factors. Both cumulative and secondary impacts on the public interest were considered.

**b. Public/private benefits of the proposed work:** The proposed project is a public action that would facilitate the flow of existing traffic congestion in Hendry County, Florida. The public benefits associated with this project would include providing increased capacity on a congested road.

**c. Practicability of alternative locations and methods to address unresolved conflicts:** No alternative locations or methods were identified that would meet the project's objective.

**d. Extent and permanence of effects of proposed work on public and private uses:** Detrimental impacts associated with the proposed project would include the loss of functions of 5.586 acres of surface waters located alongside of an existing road. Detrimental impacts would be offset by the creation of a new stormwater management system.

**e. Threatened or endangered species:** The Corps made the determination of "may affect, but is not likely to adversely affect" to the FWS for the federally listed Audubon's crested caracara, Florida panther, eastern indigo snake, and wood stork. The FWS responded via letter dated 20 December 2007 and stated that they concurred with that determination for all four species. In the case of the indigo snake, the concurrence was based on the applicant's willingness to comply with *Standard Eastern Indigo Snake Protection Measures*. In order to minimize potential impacts to the Eastern Indigo Snake, the following special condition should be incorporated into the DA permit, if issued:

- The permittee agrees to implement the attached 'Standard Protection Measures for the Eastern Indigo Snake' (as revised July 27, 1999) to minimize the potential for impacts to the eastern indigo snake.

**f. Corps wetland policy:** The proposed project includes direct impacts to 5.586 acres of surface waters. The applicant has avoided higher quality wetlands and located the project in previously disturbed surface waters and uplands. No compensatory mitigation for loss of wetland function was necessary due to the condition of the impacted areas.

**g. Cumulative and secondary impacts:** There should be no adverse cumulative or secondary impacts caused by the project. The project is located outside of the 1,550 square mile area that was studied by the Southwest Florida Environmental Impact Statement (SWFEIS).

**h. Public Interest Special Conditions:** In order to monitor the progress of the proposed construction and to ensure that the project has been constructed according to plans, the following special condition should be included in this permit, should the permit be issued:

- **Commencement Notification:** Within 10 days from the date of initiating the authorized work, the Permittee shall provide to the Corps a written notification of the date of commencement of work authorized by this permit.
- **As-Built:** Within 60 days of completion of the authorized work or at the expiration of the construction window of this permit, whichever occurs first, the Permittee shall submit as-built drawings of the authorized work and a completed As-Built Certification Form to the Corps. The drawings shall be signed and sealed by a registered professional engineer and include the following:
  - a. A plan view drawing of the location of the authorized work footprint (as shown on the permit drawings) with an overlay of the work as constructed in the same scale as the attached permit drawings (8½-inch by 11-inch). The drawing should show all "earth disturbance," including wetland impacts, water management structures, and any on-site mitigation areas.
  - b. List any deviations between the work authorized by this permit and the work as constructed. In the event that the completed work deviates, in any manner, from the authorized work, describe on the As-Built Certification Form the deviations between the work authorized by this permit and the work as constructed. Clearly indicate on the as-built drawings any deviations that have been listed. Please note that the depiction and/or description of any deviations on the drawings and/or As-Built Certification Form does not constitute approval of any deviations by the U.S. Army Corps of Engineers.
  - c. The Department of the Army Permit number.
  - d. Include pre- and post-construction aerial photographs of the project site, if available.

**11. ESSENTIAL FISHERIES HABITAT (EFH):** The project would not adversely affect Essential Fish Habitat.

**12. PUBLIC HEARING EVALUATION:** There were no requests for public hearing received during the Public Notice comment period, therefore no public hearings were held.

**13. CORPS ANALYSIS OF COMMENTS AND RESPONSES:** No comments requiring Corps analysis were received during review of this permit application.

**14. DETERMINATIONS:**

**a. Finding of No Significant Impact (FONSI):** Having reviewed the information provided by the applicant and all interested parties and an assessment of the environmental impacts, I find that this permit action will not have a significant impact on the quality of the human environment. Therefore, an Environmental Impact Statement will not be required.

**b. Compliance with 404(b)(1) Guidelines:** Having completed the evaluation in paragraph 9 above, I have determined that the proposed discharge complies with the 404(b)(1) guidelines.

**c. Section 176(c) of the Clean Air Act General Conformity Rule Review:** The proposed permit action has been analyzed for conformity applicability pursuant to regulations implementing Section 176(c) of the Clean Air Act. It has been determined that the activities proposed under this permit will not exceed de minimis levels of direct or indirect emissions of a criteria pollutant or its precursors and are exempted by 40 CFR Part 93.153. Any later indirect emissions are generally not within the Corps' continuing program responsibility and generally cannot be practicably controlled by the Corps. For these reasons a conformity determination is not required for this permit action.

**d. Public Hearing Request:** There were no requests for public hearing received during the Public Notice comment period, therefore no public hearings were held.

CESAJ-RD-ST [SAJ-2007-5300 (IP-JPF)]

SUBJECT: Department of the Army Environmental Assessment and Statement of Findings for  
Above-Numbered Permit Application


**e. Public Interest Determination:** I find that issuance of a Department of the  
Army permit is not contrary to the public interest.

PREPARED BY:



JOHN P. FELLOWS  
Project Manager  
Tampa Regulatory Office

REVIEWED BY:



TUNIS W. MCELWAIN  
Chief, Fort Myers Section

APPROVED BY:



PAUL L. GROSSKRUGER  
Colonel, Corps of Engineers  
Commanding